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Constitutional Reform and Governance Bill: Committee stage report

[Bill No 68 of 2009-10]

RESEARCH PAPER 10/18 25 February 2010

This Paper summarises the committee stage of the *Constitutional Reform and Governance Bill 2009-10.* It supplements Research Paper 09/73 which was produced for the Bill's second reading. The remaining stages of this Bill in the Commons are due to be taken on Tuesday 2 March 2010. Due to the imminence of the general election there is some uncertainty as to how far the Bill will progress subsequently in the Lords.

There have been some significant amendments during the committee stage which was taken in Committee of the Whole House. The Independent Parliamentary Standards Authority was given control over setting Members' pay and pensions by amendments to the *Parliamentary Standard Act 2009.* There is to be a new Compliance Officer to investigate alleged misuse of Members' allowances; amendments would ensure that all MPs and peers would be liable to UK taxes; there would be a referendum on whether to adopt the Alternative Vote by 31 October 2011; and a new requirement on Returning Officers to begin election counts four hours after a general election poll closes.

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Research Paper 10/18

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Summary

The Bill has been reprinted as Bill 68 of 2009-10. The Committee stage of the Bill was taken on the floor of the House, since the subject matter was considered constitutional. There have been some significant amendments and additions to the Bill since it was first introduced, set out in the order in which the changes were debated and made:

- Separate special adviser codes for Scotland and Wales;
- Liberalisation of nationality rules for the civil service;
- Time limits for human rights actions in Scotland Wales and Northern Ireland;
- Protection for salaries of certain judicial offices in Northern Ireland;
- Framework powers to the Assembly to allow corporate governance changes to the position of the Auditor General for Wales;
- Slight increase in the definition of the area around Parliament for the purposes of demonstrations;
- Amendments to the *Act of Settlement 1701* to clarify the position of Irish and Commonwealth members of the House of Lords;
- Amendments to the *Parliamentary Standards Act 2009* to introduce a new Compliance Officer and enforcement powers for IPSA; and to give IPSA responsibility for determining Members' pay and pensions;
- MPs and peers to be treated as UK taxpayers;
- A referendum to be held by 31 October 2011 on switching to the Alternative Vote method of voting at parliamentary elections;
- A requirement to begin counting votes four hours after close of poll at parliamentary elections.

No amendments were made to these following parts of the Bill:

- Treaty ratification
- Membership of the House of Lords
- Transparency of financial reporting to Parliament

The Bill was introduced in the 2008-09 session, when it received a second reading and had two days in committee. Then it was subject to a carry-over motion. The programme motion for the Bill originally allowed for four days in Committee and one for Report and Third Reading. This was amended to allow a fifth, then a sixth day in Committee, but internal knives were in operation. This led to new clauses, such as tax status of MPs and peers and the requirement to count on election night, being added without an opportunity for debate. As a general election is due to be held by 3 June 2010, there is considerable doubt as to whether there will be parliamentary time for full scrutiny by the Lords, or whether it will be truncated or even lost as part of the wash-up shortly before dissolution.

There were few divisions on the Bill. The main ones were on the procedure for treaty ratification, referendums for EU treaties, reform of the Lords through term peerages or resignations, and the AV referendum. The Government did not suffer any defeats.

1 Introduction

Library Research Paper 09/73 *The Constitutional Reform and Governance Bill* gives full details of the policy background and the content of the bill up to second reading and should be read as a complement to this Paper for full policy background. This Paper explains the changes made in the Bill since then. Further material and links to the proceedings on the Bill can be found on the Parliament bill pages on the internet. This includes a track changes version of the Bill, showing the changes made in committee.

1.1 The passage of the Bill

The Bill had two days in Committee of the Whole House in the session 2008-09 before being carried over to the new session of Parliament, where it was reprinted as Bill 4. This printing took into account amendments already agreed in committee, even though the committee stage had not been completed, in accordance with SO 80A (8). The Bill had four more days in committee, on 19, 26 January, 5 February and 9 February 2010. Following committee stage, it has been reprinted as Bill 68 of 2009-10.

The Bill has been subject to rearrangement following committee stage. This Paper gives the original clause number as in Bill 4 of 2009-10, and then the new clause number as in Bill 68 of 2009-10.

A general election must be held by 3 June 2010 and there are concerns that this Bill may not receive full parliamentary scrutiny before the dissolution of Parliament. On the sixth and last day of committee the Opposition spokesman commented as follows:

> **Dominic Grieve**: the straightforward point is that the Government know very well that this debate is going nowhere. We are now on the sixth day of the Committee stage of a major constitutional Bill. The House is about to break for 10 days. There will have to be Report and Third Reading, and there is not the slightest prospect of this legislation's reaching the House of Lords before the very end of the month or early March for Second Reading.[1]

Uncertainty has arisen as to whether the Bill would complete its Lords stages or whether it would be subject to the wash up period just after the announcement of the general election where bills are expedited or lost following bargaining between the whips of respective parties.[2]

2 Relevant reports

The content and shape of the Bill has changed considerably since it was first published as a draft Bill in 2007-08. Research Paper 09/73 has details of the various select committee reports on that Bill.

2.1 Review of prerogative powers

The Government published its review of prerogative powers on 15 October 2009.[3] The review was designed to offer a systematic review of executive (as opposed to personal) prerogative powers and referred to the reforms proposed in this Bill. It makes no new proposals for reform of the prerogative (para 5).

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1 HC Deb 9 February 2010 c815

2 For background see Library Standard Note 5085 *Dissolution of Parliament* for further details

3 *Review of the Executive Royal Prerogative Powers*

2.2 Justice Select Committee

The Committee published a report in July 2009 which summarised current thinking on constitutional reform and in particular drew attention to the potential for unexpected interactions between different strands of the debate.[4] This report predated the publication of the bill on 21 July 2009. The Government response was published in October 2009.[5] The Justice Committee issued a press notice on 20 October, to coincide with second reading, noting that the Bill did not offer a comprehensive approach to constitutional renewal:

> The Chairman of the Justice Committee, Rt Hon Sir Alan Beith MP, said today that:
>
> "The Justice Committee has looked at a range of proposals for constitutional reform and renewal over the last few years – some of these have made their way into this bill but many have not, such as reform of the dual role of the Attorney General as Government minister as well as independent legal adviser. The UK constitution is always described as 'unwritten' but this is not wholly accurate. It is, however, distributed across the politico-legal landscape in a complex web of text, precedent and convention. We believe that reform of any significant part needs to take the whole picture into account, to involve a much more substantial and creative consultation process than the Government seems to be envisaging, and there should be a referendum on any fundamental change." He added that "the reform of the Commons should be part and parcel of this process and we have identified three priorities for change: the near total control of the House's agenda by the executive; the dual role of the Leader of the House as the main channel for House business and member of the executive; and the fact that the House itself has no mechanism for introducing effective motions relating to business and timing."[6]

2.3 Joint Committee on Human Rights report

The Joint Committee published its Fourth Report of 2009-10 which included comments on the *Constitutional Reform and Governance Bill.* Its summary stated:

> We welcome a number of aspects of the Constitutional Reform and Governance Bill, which has been introduced to implement some of the commitments made by the Prime Minister in his Governance of Britain statement in July 2007.
>
> We note, however, that there are a number of significant omissions from the Bill, including in relation to judicial appointments, parliamentary scrutiny of security and intelligence matters, and the restrictive judicial interpretation of the meaning of "public function" in the Human Rights Act. We recommend amendments to the Bill relating to the latter two points.
>
> *Protest around Parliament*
>
> We welcome the proposal to repeal sections 132 to 138 of the Serious and Organised Crime and Police Act 2005 and introduce new provision for protest around Parliament based on the Public Order Act 1986, which we recommended in reports on policing and protest in 2009. We have some detailed concerns about the drafting and look forward to seeing the draft order which will specify the area to be covered by the new regime and the entrances to the parliamentary estate by which access to Parliament will be maintained.

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4 Eleventh Report from the Justice Committee: *Constitutional reform and renewal*, HC 923 2008-09.
5 HC 1017 2008-09
6 Justice Select Committee Press Notice No 58 of 2008-09

> *Ratification of treaties*
>
> If enacted, the Bill will place the parliamentary scrutiny of treaties on a statutory basis. We welcome this but recommend that the Bill should be amended to:
>
> require the Government to lay before Parliament an explanatory memorandum about a treaty at the same time as the treaty is laid;
>
> require Ministers to explain why any request for an extension of the time allowed for parliamentary scrutiny of a treaty has been refused; and
>
> remove the ministerial power to disapply the new regime in exceptional cases.
>
> *Right to a fair hearing and access to a court in the determination of civil rights*
>
> Article 6 of the European Convention on Human Rights relates to a fair hearing (including access to a court) in determination of a civil right. Provisions in the Bill relating to the removal from office of the Civil Service Commissioners; complaints about breaches of the Codes of Conduct by civil servants; complaints about selections for appointment to the civil service; and removal from office of the Comptroller and Auditor General and the chair of the National Audit Office, all, in our view, engage Article 6. We call on the Government to introduce more stringent procedural safeguards in relation to the exercise of these powers, in order to avoid breaches of Article 6. [7]

Andrew Dismore, chairman of the Joint Committee, spoke in relation to the treaty aspects on the third day of Committee and pointed out that peers on the Committee might well come back to the issue when the Bill reached the Lords.

3 Second reading debate

The Bill received an unopposed second reading on Tuesday 20 October. The original programme motion noted that the committee stage of the Bill would be taken in four days on the floor of the House. It is a convention that constitutional bills are taken on the floor of the House, rather than in public bill committee, although some committee stages have been split between the floor and committee in other constitutional bills.[8] The programme motion allowed for one day for report and third reading. A carry over motion was also passed.

The Opposition spokesman, Dominic Grieve, commented during second reading that the "title rather belies the paucity of its content'.[9] David Howarth, for the Liberal Democrats, said that the current constitutional crisis was very serious, requiring a better reaction than the Bill.[10]

Many of the speakers in the second reading debate drew attention to matters not in the Bill, such as reform of the office of Attorney General, civil service nationality requirements, overseas voters, making senior civil service salaries available online and recall provisions for MPs. The Justice Secretary and Lord Chancellor, Jack Straw, indicated interest in the proposals brought forward by Andrew Tyrie and others for temporary members of the House of Lords.[11] Mr Tyrie spoke, indicating that he thought it unlikely that a fully elected House

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7 Fourth Report from the Joint Committee on Human Rights HC 249, 2009-10, on Legislative Scrutiny: Constitutional Reform and Governance Bill; Video Recordings Bill.

8 For background, see Professor Robert Hazell "Time for a new convention: Parliamentary scrutiny of Constitutional Bills 1997-2005", *Public Law,* Summer 2006

9 HC Deb 20 October 2009 c812

10 HC Deb 20 October 2009 c827

11 HC Deb 20 October 2009 c807

could be enacted without some considerable obstruction from the upper House and therefore fixed term membership was a sensible first step. In response to questions about the power of recall, Mr Straw said that a general election had to take place before 3 June 2010, so there was no urgency in the matter at present.[12]

Most speakers focused on the Civil Service, public order and House of Lords reform. There was some interest in the question of holding those ministers to account who were not MPs.[13]

4 Committee stage 2008-9

4.1 First day 3 November 2009- Civil Service

The first day in committee on 3 November dealt with part 1 of the bill on the Civil service.

There were two main sets of Government amendments.

- Provision for separate special advisers codes for Scotland and Wales
- New clauses liberalising nationality requirements on civil servants

The amendments to clause 8 (still clause 8) on special advisers had been trailed at second reading by the junior Minister, Michael Wills:

> We are going to table an amendment—this might be of particular interest to Scottish and Welsh Members—to make similar arrangements to those in place for our civil service in respect of special advisers for Scotland and Wales. Under the proposed amendment, the Minister for the civil service may publish separate codes of conduct for special advisers in the Scottish Executive and in the Welsh Assembly Government. Where separate codes are drawn up for special advisers in the devolved Administrations, the Minister for the civil service must consult the First Ministers for Wales and Scotland, who must in turn lay the relevant code before the National Assembly for Wales and the Scottish Parliament. I hope that that addresses some of the concerns that I know have been raised in both Scotland and Wales about that matter.[14]

Due to the operation of the programme motion, the amendment was not debated in committee before being added to the bill without a vote.[15]

Amendments which had the effect of adding Andrew Dismore's Private Member' Bill *Crown Employment (Nationality) Bill* to the Bill were also added without debate and have become clauses 21-23 of the Bill as amended in committee. Jack Straw commented on second reading that Mr Dismore was welcome to table amendments to this effect at committee, but in the event it was amendments tabled by the Government which were added to the Bill, again without a vote. The new clauses enable non UK citizens to join the civil service, subject to exceptions, such as the security and intelligence service, set out in delegated legislation.

The debate on 3 November began with the Programme Motion (no 2) which was divided upon. This process took an hour. Subjects raised in the debate on 3 November included:

- Exclusion of GCHQ from the statutory basis for the management of the civil service in clause 1.[16] Amendments from the Liberal Democrats to add it were defeated.

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12 Ibid c807
13 Ibid c846
14 Ibid c876
15 HC Deb 3 November 2009 c821

- Definition of the Civil service. A Liberal Democrat amendment to publish a list of bodies which make up the civil service, and a Conservative amendment to publish annual reports on the numbers and costs of civil servants were debated.[17]

- Powers of the Civil Service Commission. Tony Wright, chair of the Public Administration Select Committee, spoke to an amendment to remove the qualification of 'exceptional case' in the Commission's powers to report to Parliament. This was resisted by the Government despite Opposition support.[18]

- Constitutional structure of the Civil Service Commission. Liberal Democrat amendments to strengthen the independence of the Commission were debated but not passed.[19]

- Management of the Civil Service in Scotland. An SNP amendment to delegate appointments of senior civil servants in the Scottish Executive to Scotland was defeated by 286 votes to 55.[20]

- Ministerial involvement in individual appointments. Liberal Democrats queried the provisions in the bill on this area, but no amendments were brought forward.[21]

- Statutory basis for the Ministerial Code. Angela Smith, for the Government made clear that the Government had no plans to make the Ministerial Code statutory.[22]

- Fiduciary responsibility on civil servants and public bodies. The Opposition spoke to amendments to place a fiduciary duty on civil servants and the wider public sector, but the amendments were not moved.[23]

- Special advisers. Kelvin Hopkins spoke to amendments to replace the term special with 'ministerial' in the description of advisers, but he did not move them.[24]

4.2 Second day 4 November 2009- Human rights, judicial office holders and Auditor General for Wales

The second day in committee took place on 4 November 2009. As well as some minor drafting amendments, there were Government amendments in respect of:

- Time limits for human rights actions in Scotland, Wales and Northern Ireland

- Protection for salaries of certain judicial offices in Northern Ireland

- Auditor General for Wales

Human rights- time limits

None of these amendments were particularly contentious in terms of party politics.[25] Michael Wills explained that the Scottish Parliament had been able to pass emergency legislation, following an order at Westminster that gave the Parliament legislative competence to so do,

16 HC Deb 3 November 2009 c778
17 HC Deb 3 November 2009 c778
18 HC Deb 3 November 2009 c793
19 HC Deb 3 November 2009 c797
20 HC Deb 3 November 2009 c807
21 HC Deb 3 November 2009 c809
22 HC Deb 3 November 2009 c812
23 HC Deb 3 November 2009 c815
24 HC Deb 3 November 2009 c816
25 *Constitutional Judicial Review in Scotland* Aidan O'Neill Judicial Review 2009 p267

under section 100 of the *Scotland Act 1998.*[26] This legislation applies a one year time limit to all proceedings raised on or after 2 November 2009. As Part 7 of Research Paper 09/73 explains, the decision to legislate follows the *Somerville* case in 2007. A recent legal article by Aidan O'Neill in *Judicial Review* doubted whether the approach followed by the Scottish Executive in pressing for legislation was an appropriate reaction to the judgement.

The Government brought forward drafting amendments and introduced a new clause to give effect to the new legislation in the Scottish Parliament, which took place after the *Constitutional Renewal and Governance Bill* was first published. The new clause would "preserve the effect of the provisions of the Act of the Scottish Parliament, but repeal that Act and the provision that gave the Scottish Parliament the power to make it, thereby restoring the previous position on legislative competence".[27] The other Government amendments introduce parity across all the constituent parts of the UK. Clauses 33 and 34 of the Bill were affected. These now appear as clauses 60-63 of Bill 68.[28]

Judicial office holders in Northern Ireland

The Government introduced a new clause to ensure that the salaries of certain judicial office holders in Northern Ireland were protected in the same way as in England and Wales. This particularly applies to tribunal judges. This has become clause 65 in the bill as amended in committee.[29] The current position is that Judges of the Court of Judicature [formerly known as Supreme Court Judges] in Northern Ireland, the Lord Chief Justice, Lord Justices of Appeal and High Court Judges, by virtue of section 9 of the *Administration of Justice Act 1973* have statutory pay protection. Under this section where the Lord Chancellor has determined the salary, any salary so determined 'may be increased but not reduced by a determination or further determination'. The salary of a number of other tribunal judiciary in Northern Ireland are not included as they are a matter for the devolved administration. But the clause applies to those who, after devolution of Policing and Justice powers to Northern Ireland, would remain the responsibility of the Lord Chancellor by virtue of paragraph 11 of Schedule 2 to the *Northern Ireland Act 1998.*

Auditor General for Wales

In relation to the Auditor General for Wales, Wayne David, junior Minister at the Wales Office, introduced a new clause to confer a new legislative competence on the National Assembly for Wales, a framework power, adding a new Matter to the *Government of Wales Act 2006.* This will enable the Assembly to make Measures in this area. Mr David said that this would enable the Assembly to put into place arrangements for the more effective oversight, supervision and accountability of the Auditor General for Wales. However, the Assembly would not be able to modify provisions in the *Government of Wales Act 2006* which set out the operational independence of the Auditor General.[30] An *Explanatory Memorandum* from the Wales Office gave further details.[31] The new clause was passed without further comment and has become clause 80 of the current Bill 68.

Other subjects raised in the 4 November debate included:

- Judicial appointments: David Heath for the Liberal Democrats asked why the proposals in the draft Bill had not been proceeded with; in response Michael Wills said that the Government remained committed to nearly all the proposals in the draft Bill, but would

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26 *Convention Rights Proceedings (Amendment) (Scotland) Act 2009*
27 HC Deb 4 November 2009 c874
28 HC Deb 4 November 2009 c873
29 HC Deb 4 November 2009 c890
30 HC Deb 4 November 2009 c957
31 Wales Office Welsh Assembly Government Memorandum on Framework Powers conferring Legislative Competence on the National Assembly for Wales October 2009

develop them separately along with its 'judicial partners', once further time had elapsed to allow more bedding down of the post 2005 system.' Mr Wills also explained the rationale in further limiting the role of the Prime Minister in judicial appointments[32]

- Salary protection for members of tribunals: Mr Heath asked for an explanation of clause 36 (now 64); Mr Wills said that the clause offered salary protection to entrench the fundamental principle of judicial independence.[33]

- Removal of Court of Appeal from the scope of the Judicial Appointments Committee: Henry Bellingham, for the Conservatives, argued that the JAC was bureaucratic and slow, and the selection process for Court of Appeal judges in sections 76 to 84 of the *Constitutional Reform Act 2005* were unnecessarily cumbersome. The proposed new clause was withdrawn.

- Running costs of the Supreme Court: Mr Bellingham drew attention to the administrative costs of the new Supreme Court. He pressed a second clause on the abolition of written tests from the Judicial Appointments Committee to a division, which was lost by 329 votes to 150.

- Comptroller and Auditor General: Kelvin Hopkins introduced amendments to set out the functions of the C&AG and to extend his remit to private sector companies supplying Government. This gave way to a more general debate about the proposed changes in the governance of the National Audit Office. During a debate on clause 42 (now 66) David Gauke, for the Conservatives, raised concerns from Professor David Heald, former advisor to the Public Accounts Commission, that the role of the Commission (and Parliament) would be diminished by the new NAO Board. Edward Leigh, chairman of the Public Account Committee, said that the independence of the C&AG was protected by statute. Finally, Mr Gauke spoke to an amendment to put the remuneration package of the C&AG online on a monthly basis. In response Mr Leigh pointed out that the C&AG published details already of all his expenses and allowances on a six monthly basis. Mr Gauke pushed the amendment to a division which was lost by 274 votes to 201.[34]

- Finally the post-employment restrictions on a former C&AG were discussed in a debate; the junior minister Sarah McCarthy-Fry said that the Government considered a two year ban achieved an appropriate balance between the independence of the C&AG and the ability of a former office holder to seek appropriate work. Ms Mc-Carthy-Fry moved some minor amendments.[35]

- Control of public expenditure by the House of Commons: Mr Howarth for the Liberal Democrats, spoke to an amendment to ensure that no new expenditure could be authorised without approval from a Commons committee, but the Government response was interrupted by the end of the time allowed under the programme motion.

5 Committee stage 2009-10

5.1 Third day 19 January 2010- Treaty ratification, protests round Parliament

The third day of debate was on 19 January 2010 and began with a new programme motion to be agreed. This had internal knives, so that certain clauses were allocated to specific committee days. There had been some speculation that further time would be needed on the

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32 HC Deb 4 November 2009 c883
33 HC Deb 4 November 2009 c888
34 HC Deb 4 November 2009 c944-949
35 HC Deb 4 November 2009 c954

Bill, as the Government committed itself to amending the *Parliamentary Standards Act 2009* in its response to the report from the Committee on Standards in Public Life on Members allowances.[36] There had also been suggestions that the bill might be used as a vehicle to introduce a commitment to a referendum on electoral reform after the next election, but these were not realised until February 2010.[37]

Mr Wills, the junior Justice Minister said by way of introduction:

> As Members know, three substantive parts of the published Bill remain to be debated: part 2 on the ratification of treaties; part 3 on the House of Lords; and part 4 on protests around Parliament. As such, I believe it to be appropriate that we today consider parts 2 and 4, along with a Government amendment relating to the effect of section 18(7) of the Electoral Administration Act 2006 on the right of Commonwealth and Irish citizens to be Members of the House of Lords and holders of other offices. That would leave the remaining day of Committee free to consider part 3 of the Bill on the House of Lords, along with any remaining proceedings.
>
> I am aware that some Members are concerned about the amount of time allocated to the Bill, should the Government bring forward any additional amendments. In relation, for example, to the report by Sir Christopher Kelly's committee, my right hon. and learned Friend the Leader of the House said at business questions last week that we are considering how much time would need to be given to the Bill in the light of any amendments to implement the Kelly report, and that remains the position.[38]

In response, the Opposition spokesman, Dominic Grieve, complained about the insertion of internal knives into the programme motion:

> We do not like internal knives, as the Minister knows, and the one merit of the second group of two days for consideration of this Bill was that there were to be no internal knives so that the House could debate the matter at its leisure, and if it were to have become clear that there was insufficient time for everything to be considered, I would, doubtless, have approached the Minister, through the usual channels, to ask him kindly to make more time available. On that basis, there is no rational reason for the internal knives now to be inserted.[39]

Following further debate, the programme motion was put to a vote and the motion was carried by 290 votes to 235.

The rest of the day was spent on:

- Treaty ratification
- Demonstrations in the vicinity of Parliament
- Clarification of amendments to the *Act of Settlement 1701* (Government New Clause 57)

Only the first item was actually debated, as the terms of the programme motion meant that these parts of the Bill had to be reached by the moment of interruption (10pm).

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36 See Library Standard Note 5167 *The establishment of the Independent Parliamentary Standards Authority* for background

37 "Labour divided on electoral reform", *Guardian,* 19 January 2010

38 HC Deb 19 January 2010 c170

39 HC Deb 19 January 2010 c171

Protests around Parliament

Some minor changes to the definition of the area around Parliament were made by Government amendments to Schedule 5. The area was increased from 250 metres square to 300 metres and a number of entrance places were specified. These amendments were passed without a vote. There was a vote, but not a debate on the principle of Schedule 5 (now Schedule 9) and it was added to the bill by 263 votes to 53.[40]

Commonwealth and Irish peers

New Clause 57 (now clause 83) stated that, for the avoidance of doubt, Section 3 of the *Act of Settlement 1701* had effect since the coming into force of section 18 of the *Electoral Administration Act 2006* and that the changes made in that Act applied solely to membership of the Commons. A written ministerial statement on 15 December 2009 had stated the Government's intention to legislate quickly as follows:

> It was suggested to the Government in April 2009 by the House authorities that the drafting of the Electoral Administration Act 2006 ("the 2006 Act"), and modifications made by that Act to section 3 of the Act of Settlement 1701, could be interpreted to have inadvertently cast doubt on whether Commonwealth and Republic of Ireland citizens are eligible for membership of the House of Lords and to hold certain offices under the Crown...
>
> Though it clearly was not the intention of Parliament in passing the 2006 Act to change the entitlement of Commonwealth and Republic of Ireland citizens to sit in the House of Lords, Ministers have concluded that it is best to put the issue beyond any doubt. Accordingly, we will introduce appropriate legislation before the end of the current Session of Parliament to remove any uncertainty on this issue.

The amendments were passed without debate and without a vote.[41]

No amendments were made to clause 24 (still 24) on treaty ratification. However, a number of amendments were proposed as follows:

Explanatory Memorandums to Treaties

Explanatory memorandum to treaty: Andrew Dismore introduced an amendment to ensure that an explanatory memorandum be produced for each treaty as recommended by the Joint Committee on Human Rights report on the Bill.[42] Mr Dismore, who chairs the JCHR, argued that this would reflect existing practice under the Ponsonby Rule. In response, the Minister for Europe, Chris Bryant, indicated that the intention was to keep publishing explanatory memorandums, but this would be for the House to decide, as with other explanatory memorandums, rather than through a legislative requirement.[43] However, he promised to consider the matter further stating that "the issue is not necessarily closed in the Government's mind".[44] Mr Dismore warned that committee colleagues in the Lords would be likely to return to the matter.

Negative resolution procedure: David Howarth, for the Liberal Democrats, introduced amendments to ensure that both Houses would have to resolve that a treaty be ratified. This and similar amendments were taken together with a clause stand part debate. There followed a general debates about the merits or otherwise of the Government approach to

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40 HC Deb 19 January 2010 c268

41 HC Deb 19 January 2010 c273. For further information see Library Standard Note 5357 *Clarification of the Act of Settlement 1701*

42 Fourth report 2009-10 HC 253

43 HC Deb 19 January 2010 c194

44 HC Deb 19 January 2010 c196

treaty ratification. Mr Howarth complained that the decision to use the negative resolution procedure meant that the Government controlled the process, since they could choose not to allow a nullifying resolution to come before the House. He received some support from Mr Grieve, for the Opposition. In response Mr Bryant pointed out that an affirmative resolution procedure for each treaty would be onerous, given the differing importance of the 30 or so treaties entered into each year.[45] The amendment was lost by 277 votes to 232.

Referendums on EU treaties: Mark Francois, for the Opposition, spoke to amendments and New Clause 68. These would have ensured that future treaties which transferred areas of power or competences from Parliament to the EU would require a nationwide referendum as a condition of ratification.[46] Mr Francois faced some probing as to the legislative priorities of an incoming Conservative Government in this area, and the difficulty of defining competences. The amendment and new clause were lost by 303 votes by 183[47] Clause 24 was then added to the Bill.

Committee on Treaties: Mr Howarth moved an amendment to create a committee in cases where the Government used its powers under clause 26 not to lay treaties before Parliament under the clause 24 procedures. There was no time to debate the amendment and it was lost by 275 votes to 62.

5.2 Fourth day 26 January 2010-House of Lords

The fourth day was on 26 January 2010. The debate began with another new programme motion on the Bill, to add a fifth day to the Committee stage. On a point of order, Dominic Grieve drew attention to the fact that an earlier version of that day's Order Paper had indicated that the Programme Motion would be debateable. In response the Speaker indicated that there had been an error in the original Order Paper, so it had been withdrawn.[48] The Motion was then adopted by 264 votes to 212.

The debate on the fourth day therefore focused on the clauses in Part 3 (now Part 5) of the Bill relating to the House of Lords. In brief, Part 3 of the Bill as introduced would end the by-elections which currently take place for excepted hereditary peers,[49] and allow for the resignation, suspension and expulsion of members of the House of Lords.[50]

No amendments were made on the fourth day of committee. New clauses on the tax status of members of the House of Lords were tabled by the Government, but these were considered on the fifth day of the Committee stage, see below.

The main points of debate were as follows:

The abolition of the by-elections for hereditary peers. The Conservative front bench argued against the inclusion of clause 29 of the Bill, which would end the current system of by-elections to fill vacancies created by the death of excepted hereditary peers. Dominic Grieve argued that the arrangements for the by-elections were a "peculiar anomaly", but that they had remained as part of a deal struck between the Labour Government and Conservative peers in the Lords in 1999. He quoted Lord Irvine speaking as Lord Chancellor in 1999 as saying "...the 10 per. cent will go only when stage two [reform to make the

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45 HC Deb 19 January 2010 c216-219
46 HC Deb 19 January 2010 c225
47 HC Deb 19 January 2010 c260
48 HC Deb 26 January 2010 c684
49 For more information see Library Standard Note, SN/PC/5141, *House of Lords Reform: Proposals to end the by-elections for hereditary peers*
50 For more information see Library Standard Note, SN/PC/5148, *Resignation, Suspension and Expulsion from the House of Lords*

chamber more democratic] has taken place. So it is a guarantee that it will take place". Dominic Grieve asked why the Government should have that obligation removed. Others argued that the elections for the hereditary peers were such an anomaly that they had to be ended,[51] others said they could not vote to retain the hereditary principle.[52] The House divided on the question that the clause should stand part of the Bill; 318 were in favour and 142 against.

Proposals for "term-peerages". Andrew Tyrie and Keith Vaz proposed an amendment to introduce term-peerages of 15 years (amendment 92). Andrew Tyrie explained the purpose of the amendment was three-fold. First, it would move membership of the House of Lords "a step along the road" from being an honour to being a job.[53] Secondly, it would address the "inevitable upward ratchet in the size of the House, given the way it is presently constituted".[54] Lastly, the proposals would leave the existing life peerage unaffected, minimising the "risk of friction" as term peerages were introduced.[55] The amendment received support from the Conservative front bench;[56] the Liberal Democrats; and some Labour backbench Members including the chair of the Public Administration Select Committee, Tony Wright.[57] However, the Justice Minister, Michael Wills, stated that the Government would not support the amendment. He argued that the proposals were based on the premise that comprehensive reform of the House of Lords was not going to happen in the near future, and this premise was "misplaced".[58] He stated that the Government "will publish draft clauses" for "wholesale reform" shortly. The House divided on the amendment, with 170 voting in favour and 249 voting against.[59]

Resignation from the House of Lords. The Bill, as introduced, allows hereditary peers sitting in the House of Lords and life peers, at any time, to resign from the House of Lords. Douglas Hogg tabled a number of amendments (60-66) that would have prevented a Member resigning from the House of Lords. Instead they would have to take a leave of absence that would make them ineligible to stand for election to the House of Commons. An amendment was also tabled by the Liberal Democrats (94) to require a five year gap between resigning from the House of Lords and eligibility to stand for election to the House of Commons. Douglas Hogg argued such provisions would be desirable because "such swapping" between Houses would "diminish the dignity and standing of the other place" and would also "diminish independence".[60] David Howarth, speaking for the Liberal Democrats, also argued that they did not want the House of Lords "to be full of people who have an eye to a future political career at a very high level".[61] For the Conservatives, Dominic Grieve explained that "it is essential to have a mechanism to ensure that a person cannot use an appointment to the House of Lords as an antechamber to a political career in this place".[62] He also pointed out that under the provisions in the Bill there would be nothing stopping people moving from the Commons, to the Lords, and back again.

Michael Wills argued against the amendments, stating that a member of one House moving to the other did not diminish the status of either chamber. He continued by arguing that he did not want to see one House turn into the antechamber for the other, but stated that

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51 David Winnick, HC Deb 26 January 2010 c717
52 Tony Wright, HC Deb 26 January 2010 c703; Dominic Grieve c723
53 HC Deb 26 January 2010 c732
54 HC Deb 26 January 2010 c732
55 HC Deb 26 January 2010 c733
56 HC Deb 26 January 2010 c734
57 HC Deb 26 January 2010 cc734-735
58 HC Deb 26 January 2010 cc741-2
59 HC Deb 26 January 2010 c744
60 HC Deb 26 January 2010 c759
61 HC Deb 26 January 2010 c761
62 HC Deb 26 January 2010 c762

guarantee that this would not happen was "the British electorate".[63] Douglas Hogg withdrew his amendments, but the Liberal Democrat amendment was put to a vote. The House divided with 179 in favour of the amendment and 270 against.[64]

At various points during the debate, the Government made reference to the fact that they would be publishing draft clauses on further reform of the House of Lords. Jack Straw stated that:

> Quite shortly, I intend to publish what will amount to the basic contents of a Bill fully to reform the House of Lords.[65]

Eleanor Laing asked:

> We have known for a very long time that this part of the Bill would be debated in the Chamber today, so why have the Government not already brought forward the draft Bill... They could have put it before us this evening, so that we could have debated this matter knowing what they intend.[66]

There were also several references to the likelihood of the clauses relating to the House of Lords in the Bill reaching the statute at all. Douglas Hogg, for example, stated:

> ..Does he [Mr Straw] agree that the chances of the Bill becoming law are now negligible? It will probably have a sixth day of consideration, which will be about the time of the February recess. The Bill will then go to the other place, which will not pass it by the time of dissolution. The Bill is a gimmick that has no prospect of becoming law.[67]

Amendments tabled on the House of Lords Appointments Commission by members of the Public Administration Select Committee (New Clauses 60-67 and New Schedule 5) were not reached.

At the time of writing (25 February 2010) the draft clauses have not yet been published. Considerable doubt remains as to whether the Bill will be subject to further amendment in the Lords in this area.

5.3 Fifth day 1 February 2010 –IPSA and tax status of Members

The fifth day was on 1 February 2010 which was dominated by Government amendments relating to the *Parliamentary Standards Act 2009* and to clarify the tax status of MPs and peers.

Main changes

The main changes, following Government amendments, were:

- A series of amendments to the *Parliamentary Standards Act 2009* to reflect the new role for the Independent Parliamentary Standards Authority (IPSA) recommended by the Committee on Standards in Public Life.[68]

- New clauses to ensure that MPs and peers are liable to UK taxes.

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63 HC Deb 26 January 2010 c764
64 HC Deb 26 January 2010 c767
65 HC Deb 26 January 2010 c692
66 HC Deb 26 January 2010 c742
67 HC Deb 26 January 2010 c702
68 See Standard Note 5167 *The Establishment of IPSA* for details of the Kelly proposals.

Firstly, a new money resolution was agreed for the Bill, to reflect the extended responsibilities of the IPSA over pensions.[69] A new programme motion was tabled, adding a sixth day to the committee stage. The programme motion was not debateable, but it was opposed. The motion was adopted by 246 votes to 187.[70]

IPSA

The New Clauses affecting IPSA were introduced as a group, from NC 70 to 84 and New Schedules 6-9. These have become Part 4 of the Bill as considered in committee. Jack Straw introduced the changes, explaining how the role of the new Compliance Officer would dovetail with that of the Parliamentary Standards Commissioner:

> **Mr. Straw:** The role of the parliamentary commissioner is to enforce the various codes-Standing Orders-that the House has established to deal with, for example, declarations of interest. That is the most obvious example, but included in that would also be examples of advocacy in the House-cases where somebody has been taking money from a particular organisation or individual to advocate a cause and has then failed to disclose that-and many other matters. The enforcement of the rules about allowances, for example in respect of office costs, travel and accommodation, is plainly a matter for IPSA and therefore would fall to the compliance officer.
>
> We have separated the two roles, as set out in the group of amendments. The Committee will note that new clause 70 provides for the appointment of a compliance officer and that one of new schedules sets out in more detail how that officer would be appointed and how he or she could be removed.
>
> **Sir George Young (North-West Hampshire) (Con):** Further to the intervention from my hon. Friend the Member for Worthing, West (Peter Bottomley), will the terms of reference of the Standards and Privileges Committee and the Parliamentary Commissioner for Standards then be constrained, so that it will not be possible to refer the matters to which my hon. Friend referred to them?
>
> **Mr. Straw:** It is subject to any advice that we get from those at the Table, but the responsibilities of the John Lyon figure and the Standards and Privileges Committee are entirely a matter for the House, full stop. These changes do not deal with that.[71]

Sir George Young, Shadow Leader of the House, spoke to New Clause 87, requiring IPSA to have a duty to advise Members on claims prior to formal submission and to promote best practice. Jack Straw asked that the new clause be not moved, promising further consultation with IPSA to reach an acceptable wording:

> The other side of this is that the Independent Parliamentary Standards Authority does not want to be in a position where somebody phones up and, in good faith, a member of staff says, "We think you should do such and such." The member of staff may not be a senior member and is just giving informal advice, but that is regarded as holy writ. Nobody is suggesting that that should happen. I promise that between now and Report we will discuss the matter actively with colleagues here to try and reach wording that is acceptable to Members of the House and as far as possible to Sir Ian Kennedy and his colleagues on the authority.[72]

Sir George expressed concerns about the possibility of Members facing double jeopardy-investigation both by the Compliance Officer and the Parliamentary Standards Commissioner

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69 HC Deb 1 February 2010 c42. See Mr Straw at c85
70 HC Deb 1 February 2010 c47
71 HC Deb 1 February 2010 c49
72 HC Deb 1 February 2010 c54

and queried whether the appointment of the Officer should not have been made more independent of IPSA:

> Before, we had a proper firewall between the investigator and the day-to-day administration of IPSA, but that has now gone. This is important because, in my experience of cases in which Members have been accused of a financial misdemeanour, sometimes the source of the error can be traced to misdirected advice from the Fees Office, as the Secretary of State mentioned.[73]

Sir George deprecated the comparison with the HMRC adjudicator, since the Officer would be holding the customer (the MP) to account on behalf of the regulator and commented that the process of investigating was becoming unnecessarily formalised.[74] He also expressed concern about the lack of consultation with the existing trustees of the parliamentary pension scheme. David Heath, for the Liberal Democrats, expressed similar concerns, doubting whether the introduction of a civil penalty provision was helpful.[75] On behalf of the Trustees of the Fund, Nick Harvey expressed considerable concern about the rapidity of the changes to the parliamentary pensions scheme, which would leave considerable scope for discretion with IPSA.[76]

5.4 Changes to the *Parliamentary Standards Act 2009*- the details

Compliance Officer

New Clause 77 (now 42) removes section 8 of the *Parliamentary Standards Act 2009* which had previously provided for a Commissioner for Parliamentary Investigations, and a statutory Code of Conduct for Members. It also substitutes a new version of section 9. Instead, New Clause 70 (now 36) would introduce a Compliance Officer for IPSA with the role of investigating complaints about the misuse of Members' allowances. Responsibility for maintaining a Code of Conduct will rest with the House of Commons. The IPSA board was made responsible for appointing the Compliance Officer.[77] Schedule 4 of Bill 68 substitutes a new Schedule 2 into the *Parliamentary Standards Act 2009,* which sets out method of appointment, remuneration etc. This was the occasion of some comment; Mr Straw indicated that IPSA would begin the appointments process as soon as possible, so that a postholder would be appointed as soon as possible after April 2010.[78]

New section 9(1) allows the Compliance Officer to conduct an investigation if he has reason to believe that an allowance has been overpaid; he may conduct an investigation on his own initiative, at the request of IPSA or the MP concerned, or following a complaint from an individual. The MP and IPSA must provide any relevant information required.

Subsections 9(4-8) deal with the conduct of investigations, setting out a two stage process whereby the Compliance Officer prepares provisional findings after which the MP and IPSA may make representations and the MP may call and examine witnesses:

> New section 9(4) and (5) set out a two stage process whereby the Compliance Officer, following his or her investigation, prepares provisional findings and then concludes the investigation by issuing a statement of his or her definitive findings. The MP concerned and IPSA will have an opportunity to make representations to the Compliance Officer during the course of the investigation and following receipt of the Compliance Officer's provisional findings. By virtue of procedures made under new section 9A(2)(b) and (3),

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73 HC Deb 1 February 2010 c60
74 HC Deb 1 February 2010 c62
75 HC Deb 1 February 2010 c66
76 HC Deb 1 February 2010 c78
77 HC Deb 1 February 2010 c50
78 HC Deb 1 February 2010 c86

> in making representations during the investigation phase an MP will have an opportunity to give oral evidence to the Compliance Officer and to call and examine witnesses.
>
> New section 9(6) provides that the findings of the Compliance Officer may include a finding that the MP concerned has failed to co-operate with the investigation by not providing the Compliance Officer with requested information within the timeframe specified and/or findings about the role of IPSA in respect of the matters under investigation. The Compliance Officer may, therefore, make a finding that the MP concerned had been paid expenses which should not have been paid under the allowances scheme but that part of the responsibility for this rests with the IPSA.
>
> By virtue of new section 9(7) and (8) the Compliance Officer need not make a definitive finding if the MP has accepted the provisional finding, such other conditions as may be specified by the IPSA are met and the MP repays the IPSA such amount as the Compliance Officer considers reasonable. The Compliance Officer will have a discretion whether to terminate an investigation through this procedure.[79]

In section 9A, IPSA is required to determine the detailed procedures for the conduct of investigations and also the procedures for publicising Compliance Officer conclusions. These must be fair.

Enforcement powers

New Clause 78 (now 44) inserts new Section 9B and Schedule 4 into the *Parliamentary Standards Act 2009*. The new Schedule is printed as Schedule 5 in Bill 68. Section 9B(2) allows the Compliance Officer to provide information to the Parliamentary Commissioner for Standards if relevant to the work of the Commissioner. The Compliance Officer must give a repayment direction, which may also require the Member to pay interest on the overpaid amount and/or pay to IPSA the costs incurred by IPSA in relation to the overpayment, including the costs of the Compliance Officer investigation. Members may appeal against a direction to the First-tier Tribunal, or request an extension of the repayment period from the Compliance Officer.

IPSA may recover overpaid amounts by making deductions from pay and allowances, as if a county court order had been applied for. The Compliance Officer may also serve penalty notices up to £1,000. There is also provision for appeals against these notices. The *Explanatory Notes* to the amendments give greater detail.

Relations with other bodies

New Clause 70 (now 45) introduces Section 10A which requires IPSA and the Compliance Officer to issue a joint statement setting out how they will work with the Parliamentary Commissioner for Standards, the DPP, the Metropolitan Police, and any other appropriate person. The *Explanatory Notes* set out how these new powers do not replace or override the disciplinary powers of the House:

> New section 10A(3) provides that the investigatory and enforcement powers of the Compliance Officer do not affect the disciplinary functions of the House of Commons. It will, therefore, be open to the House to impose its own parliamentary sanctions on an MP who has been the subject of enforcement action by the Compliance Officer. Conversely the Compliance Officer may exercise his or her investigatory and enforcement powers in respect of an MP who is, or has been, prosecuted for an

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[79] *Constitutional Reform and Governance Bill: Government Amendments to give effect to certain recommendations of the Committee on Standards in Public Life -Explanatory Notes*- 2010 Not available electronically

> offence or disciplined by the House in respect of the same conduct (new section 10A(4)).[80]

Membership of Speaker's Committee

New Clause 71 (now 37) amends Schedule 3 to the *Parliamentary Standards Act 2009 (PSA)* so that the membership would also include three lay members, defined as a person who has never been a member of either House. These are to be selected by the Speaker through fair and open competition.

Transparency of IPSA

New Clause 72 (now 38) inserts a new section 3A into PSA requiring IPSA to act in a way which is efficient, cost effective and transparent, and that Members should be supported in such ways in order to carry out their parliamentary functions. New section 5A would require the scheme for MPs allowances to be published together with a statement of the reasons for adopting that scheme. New section 6(8) would require IPSA to publish appropriate information on claims and payments of allowances, determining its procedures in this respect after consulting the Speaker, the Leader, the Standards and Privileges Committee, the Compliance Officer and any other person IPSA considers appropriate. The *Explanatory Notes to the amendments* stated: This general duty will replace the narrower duty on IPSA to do things efficiently and cost-effectively set out in paragraph 10 of Schedule 1 to the 2009 Act.

Determination of Members' pay

New Clause 73 (now 39) substitutes a new section 4 and 4A into the *Parliamentary Standards Authority Act 2009*, which gives IPSA the responsibility for determining Members' pay; The *Explanatory Notes* state:

> New section 4(7) provides that the duty to pay a salary is subject to anything done in the exercise of the disciplinary powers of the House of Commons so that a salary can be withheld, or deductions made from it, as a consequence of the exercise of the disciplinary powers of the House of Commons.
>
> New section 4A(2) allows the IPSA to determine that the salaries of those holding an office or position specified in a resolution of the House of Commons, such as a Chairman of a Select Committee, are to be paid at a higher rate than for other Members of the House. New section 4A(3) permits IPSA to make different provision under new section 4A(2) for different offices or positions. This will allow the amount of the additional salary paid to be tailored to the office or position
>
> New section 4A(4) gives the IPSA the authority to include a formula or mechanism in the determination so as to automatically adjust salaries without the need for a further determination.
>
> A determination may have retrospective effect so that, for example, an increase in salary could be backdated to a point before the determination was made (new section 4A(5)).

IPSA must make a determination on pay in the first year of each Parliament and at any other time that it considers appropriate. Before making the determination it must consult the SSRB, those affected by the determination, the Minister for the Civil Service, the Treasury and any other person IPSA considers appropriate. There is specific power for IPSA to delegate to the

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[80] *Constitutional Reform and Governance Bill: Government Amendments to give effect to certain recommendations of the Committee on Standards in Public Life -Explanatory Notes-* 2010.Not available electronically

SSRB the function of reviewing a determination but not the decision whether to make a new determination. The first determination will not come into effect until April 2012; until the first determination, salaries will continue to be payable by resolution of the House. Although there is power to section 4A(5) to award retrospective increases, the section makes clear that the first determination by IPSA cannot have retrospective effect.[81]

During the debate, Mr Straw set out the position on the determination of MPs' pay until 2012:

> The hon. Member for Cities of London and Westminster (Mr. Field) spoke about MPs' pay and asked why new clause 73 explicitly provides that the first determination would not come into force until 1 April 2012. I want to make it clear that, until then, the decision of the House of July 2008 will apply. There is an automatic regulator of our salaries: the House has said by resolution that any recommendation of the Senior Salaries Review Body will be implemented. An agreement has already been reached for 2010, so the 2011 pay increase will arise from the SSRB and it will come from IPSA thereafter. It is proposed that there will be a first determination, which will be the equivalent of the quinquennial review that the SSRB carries out, for example, in respect of judicial salaries, and the frequency of further determinations will be a matter for IPSA thereafter.[82]

The power of the House to withhold pay and allowances as a disciplinary sanction is explicitly set out in New Clause 74 (40), which amends section 5 of PSA:

> This clause amends section 5 of the 2009 Act (which requires the IPSA to prepare and keep under review an allowances scheme). It provides that the duty on IPSA to pay an allowance to an MP in accordance with the allowances scheme is subject to any disciplinary actions taken against the MP by the House of Commons. Such action could, amongst other things, include the withholding of one or more allowances for a specified period.[83]

Reviews of IPSA's determinations

New Clause 75 (41) inserts section 6A into PSA, creating an appeal mechanism for Members if IPSA refuse an expense claim or agree to pay in part only. The *Explanatory Notes* state:

> Under new section 6A(1) an MP, after having given IPSA a reasonable opportunity to reconsider its decision to refuse (in whole or in part) an expenses claim, may ask the Compliance Officer to review IPSA's decision (including any modification of that decision following IPSA's own review). On completion of the review by the Compliance Officer, he or she may either confirm that IPSA's determination of the expenses claim was correct or alter that determination. Where the Compliance Officer decides to alter IPSA's determination, the Compliance Officer may also make findings about the way in which IPSA dealt with the expenses claim (new section 6A(3)).[84]

An MP may appeal against the Compliance Officer's decision to a First Tier Tribunal, established under the *Tribunals Courts and Enforcement Act 2007.* This would be a re-hearing under new section 6A(8). There is a right of appeal, on a point of law only, to the

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81 HC Deb 1 February 2010 c58

82 HC Deb 1 February 2010 c83

83 *Constitutional Reform and Governance Bill: Government Amendments to give effect to certain recommendations of the Committee on Standards in Public Life -Explanatory Notes*- 2010 Not available electronically

84 *Constitutional Reform and Governance Bill: Government Amendments to give effect to certain recommendations of the Committee on Standards in Public Life -Explanatory Notes*- 2010 Not available electronically

Upper Tribunal, with a time limited 28 days for appeal. Mr Straw defended the right of MPs to call witnesses, as proportionate to meet JCHR recommendations for fairness.[85]

Repeal of sections 11 and 15 of the Parliamentary Standards Act 2009

New Clause 80 (now 46) repeals section 11, which would have permitted IPSA to take over the functions of the Parliamentary Standards Commissioner in relation to registers held by the Commissioner, it would also have permitted the Commissioner for Parliamentary Investigations to take over the functions of the Standards Commissioner. New Clause 81 (now 47) repeals section 15 which had been a sunset clause for aspects of the 2009 Act including the Code of Conduct, the Commissioner for Parliamentary Investigations and the offence of providing false or misleading information, the last of which remains in force.

Resettlement grants for MEPs

New Clause 83 (now 49) set out amendments to the scheme for resettlement grants for MEPs, to allow IPSA to determine the scheme for the purpose of the *European Parliament (Pay and Pensions) Act 1979,* only if resettlement grants for MPs are continued in the statutory determination of Members' allowances. This new clause was not the subject of specific debate.

Members' pension arrangements

New Clause 84 (now 50) and New Schedule 9 (now Schedule 7) affect the pension scheme for MPs and Ministers by allowing IPSA to make pension schemes for Members and the Minister for the Civil Service to make pension schemes for Ministers. Mr Straw said:

> **Mr. Straw:** I cannot say precisely what discussions took place with the trustees. However, I can tell the right hon. Gentleman about conversations that I have had, particularly with my right hon. Friend the Member for Islwyn (Mr. Touhig), on behalf of the chairman of the trustees, who is currently indisposed through illness. I hope to give the Committee some comfort about two key issues that the trustees have raised with me.
>
> The first issue relates to accrued rights-that is, the rights to a pension that Members have already accrued. These provisions are silent on whether IPSA could change accrued rights peremptorily, and there is some anxiety about that. That is no part of our intention, nor that of IPSA. The Committee will be aware that section 67 of the Pensions Act 1995 sets out the requirements that have to be followed if there are proposals to change accrued rights. If a so-called protective modification is to be made, the informed consent of the Members affected is required. Since what we are seeking to do through the whole IPSA arrangements is to put Members of Parliament in no better and no worse a position than members of the public in ordinary employment, we accept that there should be a similar protection for accrued rights. Discussions have taken place about how that might be done. Officials are considering whether, for example, provisions for Members' pensions should hook in with the provision in the 1995 Act, which might be the most sensible way of doing it.
>
> The second issue, which relates to trustees, has been raised by several Members, including my hon. Friend the Member for Ellesmere Port and Neston (Andrew Miller...The provisions as drafted give IPSA the right to appoint whomsoever it wishes as trustees. There is provision in the Pensions Act 2004 that at least one third of trustees of any pension scheme should be representative of the members of the

[85] HC Deb 1 February 2010 c86

> scheme. We propose to look at that to see whether such a provision could be brought in as an amendment on Report.[86]

5.5 Tax status of MPs and peers

There has been growing concern about individual peers who may not have been subject to UK taxes.[87] Mr Wills introduced New Clauses 85 and 86 (now 57 and 58), which ensure that Members of both Houses would be considered liable to UK taxes. These Clauses received Opposition support and so were not subject to a division. They were grouped with New Clause 52 sponsored by Gordon Prentice, which would have had retrospective effect. However the Government New Clauses were added to the Bill without a vote; under the terms of the programme motion there was no opportunity for a separate vote on the Prentice clause, which was not therefore added to the Bill. A number of points of order resulted and the Speaker commented on the proceedings the following day, explaining that the Bill had finished earlier than expected and so there had been an informal suspension. [88] The changes are discussed in detail below.

Michael Wills introduced the New Clauses 85 and 86 as follows:

> New clause 85 provides that all MPs will be deemed resident, ordinarily resident and domiciled from taking up their seat in this House upon taking the oath. Therefore, only those who were full UK taxpayers may sit and vote in this House. In the other place, all those appointed after the Bill receives Royal Assent would be aware that if they accepted a life peerage and a seat in the other place, they would be deemed resident, ordinarily resident and domiciled for tax purposes.
>
> It is not possible to change a person's resident, ordinarily resident and domiciled tax status part way through a tax year, so in both instances MPs and peers would be deemed to be resident, ordinarily resident and domiciled for the whole of any tax year in which they were Members. That means that they would be deemed as such from the start of the tax year in which they took up their seat and to the end of the tax year in which they stood down.
>
> We acknowledge that the situation is different for incumbent Members of the House of Lords, who will be unable to resign from the House until the provisions in part 3 of the Bill come into force. As such, new clause 86 provides for a transitional period of three months during which incumbent peers can give notice in writing to the Clerk of the Parliaments that they are not willing to be subject to the deeming provision, and from that point their membership of the other place would cease.[89]

As a co-sponsor of the new clauses, Dominic Grieve expressed support but queried the impact on Commonwealth peers and the effect of a leave of absence. Mr Wills pointed out that bishops would not be included within the provision, as their membership was linked to the Church of England.[90] David Howarth queried whether the Government decision to use the 'deeming' approach was the most sensible solution, suggesting that the question of domicile should be tackled.[91] Gordon Prentice argued in favour of his clause, which involved retrospectivity, but accepted for procedural reasons that there would not be a separate vote on it.[92]

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86 HC Deb 1 February 2010 c56
87 "Questions the Tories still won't answer: does Lord Ashcroft pay tax?" 8 February 2010 *Guardian*
88 HC Deb 2 February 2010 c170
89 HC Deb 1 February 2010 c115
90 HC Deb 1 February 2010 c117
91 HC Deb 1 February 2010 c122
92 HC Deb 1 February 2010 c126

5.6 Sixth day 9 February 2010- Referendum on the Alternative Vote

This sixth day on 9 February 2010 was the last day in Committee. A third Money resolution was passed to deal with the extra expenses of a referendum. A number of Conservative backbenchers opposed the resolution which was the subject of a vote. The Resolution was passed by 357 votes to 180.[93]

There were several Government new clauses added to the Bill on holding a referendum to introduce the Alternative Vote (AV) electoral system.

In addition, the Government supported an Opposition new clause to require Returning Officers to begin the election count four hours after the close of the poll.

Finally, there were minor amendments on the extent, short title and commencement provisions of the Bill.[94]

Referendum on Electoral Systems

Full background on the AV system and AV plus system recommended by the Jenkins Commission in 1998 is given in Library Standard Note 5317 AV and electoral reform, which gives details of Labour Party manifesto commitments to holding referendums on electoral reform. On 2 February 2010 Gordon Brown announced that the Government would make provision for a referendum in this Bill. This followed weeks of speculation.

The following new clauses were added:

New Clause 88 (now 29) which requires a referendum to be held by 31 October 2011 on the voting system for parliamentary elections, following a Command Paper presented to Parliament. The question was specified as a choice between AV and the existing First Past the Post system. The full text of clause 29 is as follows:

> **Referendum on voting systems**
>
> '(1) A referendum is to be held, no later than 31 October 2011, on the voting system for parliamentary elections.
>
> (2) The Secretary of State must-
>
> (a) present to Parliament a Command Paper describing an alternative-vote system for consideration by voters in the referendum;
>
> (b) by order made by statutory instrument specify the question to be asked in the referendum (and any statement that is to precede the question) and fix the date of the poll.
>
> (3) The question specified under subsection (2)(b) must ask voters whether they would prefer the alternative-vote system described in the Command Paper to be used for parliamentary elections instead of the existing voting system (commonly referred to as "first past the post").
>
> Any form of words to that effect may be used.
>
> (4) In this section "alternative-vote system" means a system under which, for each constituency-

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93 HC Deb 9 February 2010 c785
94 HC Deb 9 February 2010 c879

(a) one candidate is elected;

(b) voters must indicate their first-choice candidate and may also rank any or all of the other candidates in order of preference;

(c) votes are allocated to candidates in accordance with voters' first choices and, if one candidate has more votes than the other candidates put together, that candidate is elected;

(d) if not, the candidate with the fewest votes is eliminated and that candidate's votes are dealt with as follows-

(i) each vote cast by a voter who also ranked one or more of the remaining candidates is reallocated to that remaining candidate or (as the case may be) to the one that the voter ranked highest;

(ii) any votes not reallocated play no further part in the counting;

(e) if one candidate now has more votes than the other remaining candidates put together, that candidate is elected;

(f) if not, the process mentioned in paragraph (d) is repeated as many times as necessary until one candidate has more votes than the other remaining candidates put together, and so is elected.

(5) The reference in subsection (4)(d) to the candidate with the fewest votes, in a case where there are two or more candidates with fewer votes than the others but an equal number to each other, is a reference to the candidate eliminated in accordance with whatever provision is made for that case.

(6) The reference in subsection (4)(f) to the candidate with more votes than the other remaining candidates put together, in a case where there are only two remaining candidates and they have an equal number of votes, is a reference to the candidate elected in accordance with whatever provision is made for that case.

(7) A statutory instrument specifying the question to be asked in the referendum or fixing the date of the poll may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(8) Subsection (1) and sections [Entitlement to vote] to [Restriction on legal challenge to referendum result] do not apply (and no further duty arises under subsection (2)(b)) if either House of Parliament, on a motion to approve a draft laid under subsection (7), decides not to approve it (unless the Secretary of State decides to lay the draft again under subsection (7), or to lay a revised draft under that subsection, and the re-laid or revised draft is approved by a resolution of each House).'

Other associated clauses were as follows:

- New Clause 89 (now 30) to make the franchise for the referendum the same as for parliamentary elections.
- New Clause 90 (now 31) to set the referendum period for the purposes of the *Political Parties, Elections and Referendums Act 2000* (PPERA), which would be a maximum of 6 months.
- New Clause 91 (32) to empower the Electoral Commission to promote public awareness about the referendum.

- New Clauses 92 and 93 (33 and 34) to provide for payments to counting officers for the referendum poll.

- New Clause 94 (35) to restrict legal challenges to the count, following normal practice for referendums and elections.

- New Clauses 95 and 96 (84 and 85) to make amendments to PPERA in respect of expenditure rules for campaigning. The clauses would prevent campaigners avoiding the statutory limits by registering separate permitted participant groups which would then work together.

The referendum new clauses were introduced as a group by Mr Straw. He stated that he was a long term supporter of AV, as a majoritarian system which preserved the constituency link and did not create two classes of Members unlike the Additional Member System in Scotland and Wales. He also stated that no consensus had emerged following the publication of the Jenkins report recommending AV plus in 1999.[95] He attacked Opposition proposals to introduce constituencies of equal electoral size, as failing to respect local boundaries.[96] In response, Dominic Grieve, for the Opposition, drew attention to the failure of the Government to introduce a referendum on the subject, despite manifesto commitments and commented on the lack of public enthusiasm for a change in the voting system. He also accused the Government of introducing the new clauses for purely partisan reasons.[97] Frank Field spoke to amendments which were not moved in favour of a second ballot system. He also spoke on the subject of open primaries.[98]

For the Liberal Democrats, David Howarth spoke in favour of Liberal Democrat amendments designed to introduce a Single Transferable Vote system, but said that his party would nevertheless support the Government's new Clause if only to ensure that LD amendments on STV would be voted upon later.[99] Mr Howarth commented that it would be possible for a Conservative Government to avoid holding the referendum without further primary legislation:

> The Government have to decide whether they really want to have this referendum or whether this is, as other hon. Members have implied, simply an exercise in gesture politics or even a case of setting up an opportunity to send out target letters. If the Government were really serious about the proposal, they would be setting it up so that an incoming Conservative Government could only reverse the duty to have a referendum by a full Act of Parliament. New clause 88 means that it will be possible for an incoming Government simply to propose the necessary statutory instrument and then defeat it using their majority. At that point, the entire duty to hold a referendum disappears.
>
> By having the date of the referendum way into next year, it is possible to remove the duty to have a referendum by using the Parliament Act, without having a majority in both Houses. The effect of amendment (a) would be to change the date by which there must be a referendum to May next year, so that, because of how the Parliament Act works, inevitably it would be less than 13 months from the Second Reading of any repeal Bill. A repeal Bill could not, therefore, be forced through using the Parliament Act.[100]

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95 HC Deb 9 February 2010 c795-96
96 HC Deb 9 February 2010 c804
97 HC Deb 9 February 2010 c804-815
98 HC Deb 9 February 2010 c815-820
99 HC Deb 9 February 2010 c824
100 HC Deb 9 February 2010 c830

There was considerable debate as to whether the New Clause and the Bill itself would ever receive royal assent, given the imminence of the 2010 general election.[101] Mike Wishart for the SNP argued that proportional representation had been readily accepted in Scotland, [102] and Mark Durkan for the SDLP also argued in favour of a voter choice in the form of a referendum.[103] The new clauses were added to the Bill by 365 votes to 187.[104] The LD amendment on STV was defeated by 476 by 69.[105] Under the terms of the programme there was no further time for debate, and the other referendum new clauses were added to the Bill without further divisions.

Requirement to count overnight in parliamentary elections

Background to this issue is given in Library Standard Note 5166 *Timing of Parliamentary Election Counts.* New Clause 98 (now 86) requires Returning Officers to begin counting votes within four hours of the close of the poll by amending the Parliamentary Election Rules in the *Representation of the People Act 1983.* The Secretary of State was also made responsible for guidance on the exceptional circumstances which would be the only defence for not beginning the count. The New Clause was sponsored by the Opposition, but received Government support. It was added to the Bill without a division.[106]

There was not a separate debate on New Clause 98 but Jack Straw announced his support before speaking to the referendum new clauses:

> It might be convenient if I give the Committee notice-I have already given the Table Office and the official Opposition notice-in respect of new clause 98, in the names of the hon. Member for Epping Forest (Mrs. Laing) and several of her hon. Friends and my hon. Friends, including my hon. Friend the Member for Morecambe and Lunesdale (Geraldine Smith). It proposes that the counting of votes at the general election should take place within four hours of the close of the poll unless there are exceptional reasons. There was a discussion about that during Justice questions about an hour and a half ago, and I propose to attach my name to the new clause, so that it can be the subject of a vote.[107]

The new clause would require a commencement order before it took effect; guidance would also need to be drafted before that commencement order. Given that the general election is due to be held shortly, there have been doubts as to whether the clause could be brought into force before the election is held. The Electoral Commission have also queried whether any guidance could properly cover all exceptional circumstances. Further details are available in Library Standard Note 5166.

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101 HC Deb 9 February 2010 c840
102 HC Deb 9 February 2010 c845
103 HC Deb 9 February 2010 c848
104 HC Deb 9 February 2010 c867
105 HC Deb 9 February 2010 c871
106 HC Deb 9 February 2010 c879
107 HC Deb 9 February 2010 c792